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May 26, 2011

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Office of Proceedings

MAY 26 2011

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Public Record

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
3985 E. Street, S.W.
Washington, DC 20423

Re: Docket No. 35377, North Shore Railroad Company – Acquisition
And Operation Exemption – PPL Susquehanna, LLC.

Dear Ms. Brown:

This letter is being filed on behalf of PPL Susquehanna, LLC ("PPLS"), a subsidiary of PPL Generation, LLC ("PPL Generation"), in response to the Board's decision served April 26, 2011 in Docket No. 35377. In that decision, the Board asked PPLS to respond to questions concerning its acquisition of a 6 mile rail line (the Line) connecting the PPL Susquehanna electric generating station, located about 7 miles northeast of Berwick, PA, with the lines used by PPLS's sole rail connection, North Shore Railroad Company ("North Shore").¹ Counsel for PPLS also met with the STB's Office of Public Assistance, Governmental Affairs and Compliance to discuss the matter.

The generating station is 90% owned by PPL Susquehanna, LLC, a subsidiary of PPL Generation. Allegheny Electric Cooperative has a 10% ownership interest in the facility but it is operated by PPLS.

¹ The line extends from MP 171.0 at Berwick to MP 177.0, and the generating station is said to be at Hicks Ferry or Beach Haven, though the plant's street address is 769 Salem Boulevard, Berwick, PA 18603.

Unlike other major generating stations in Pennsylvania owned or operated by other subsidiaries of PPL Generation, PPL Susquehanna is a nuclear power plant, with limited need for and use of rail transportation service. The Line in question here has not been a significant focus of PPLS management in recent years, though the rail connection was important during the construction of the power plant prior to the commencement of commercial operations in 1983 (Unit 1) and 1985 (Unit 2). PPLS has always intended for service over the line to be provided by an existing railroad company like North Shore.

Because it was then and is now primarily interested in the Line as a shipper, with no railcars or PPLS personnel performing rail service, PPLS has limited files, documents and knowledge of the history of the Line, and relies on North Shore for some of the background information in this response, and particularly for background information dealing with period prior to PPLS's acquisition of the Line in 2005.

So far as PPLS is aware, the Line was formerly part of the Bloomburg Branch of the Erie Lackawanna Railroad. It was subsequently acquired by PennDOT under Section 304 of the 3R Act. PennDOT subsidized the Line for many years, and deliveries were made by Conrail, under a contract subsequently assigned to North Shore.

Though North Shore has been the delivering railroad for many years, North Shore is a short line railroad, connecting with Norfolk Southern Railway at Northumberland, PA. Prior to its acquisition of the line, PPLS dealt, for the most part, directly with Norfolk Southern in arranging shipments to and from the nuclear power plant, and dealt with North Shore as to routine shipment delivery issues.

In the years since completion of the power plant, PPLS made fewer than a dozen shipments a year on average, and those shipments consisted of only one or two cars. In 2009, PPLS received a total of 14 carloads, and shipped one carload containing a turbine rotor outbound. Goods shipped included equipment for the power plant, some of which could be large and heavy, and empty and loaded casks for shipment of low-level radioactive materials (clothing, etc.). High level radioactive material such as spent nuclear fuel has not been shipped by rail or any other mode for decades. Rather, it is stored on-site at the power plant. However, empty spent fuel storage casks have been delivered by North Shore.

PPLS has no knowledge of any use by third parties of the Line for rail shipments or deliveries. While it is likely that North Shore handled goods for other parties to or from Berwick, PPLS has been the only company shipping or receiving rail freight over the Line.

In 2004 or 2005, PPLS had an opportunity to acquire the Line. It is not clear whether the Line would have been subject to abandonment if not acquired, but PPLS was concerned about the possibility of being cut off from the national rail system, despite the infrequency of service.

The nuclear power plant is an important part of the generating operations of the PPL Generation, which also include large coal-fired power plants elsewhere in Pennsylvania, as well as hydroelectric facilities. There is the possibility that the facility will need to bring in a part, such as a generator shaft, that would be difficult or impossible to move any other way. Low level radioactive materials shipments might move by truck, but rail is likely to be safer.

In addition, during construction of the nuclear power plant in the late 1970s and 1980s, PPLS relied heavily on rail transportation to the site. If PPLS were to decide to expand the power plant, possibly by adding a third unit, PPLS might once again rely on rail – Norfolk Southern and North Shore – for extensive shipments.

A search of PPLS's records turned up a copy of a quitclaim deed, which is attached. By that deed, dated July 12, 2005, PennDOT conveyed ownership of the Line to PPLS and Allegheny Electric Cooperative for \$121,000.

The deed reserves to PennDOT a right of reversion in the event the grantees did not provide "continuous rail freight transportation on the Line, as described in Section 5 of Commonwealth Agreement of Sale Agreement No. 820346, for a period of at least five (5) years after closing." So far as PPLS is aware, PennDOT has no interest in reacquiring the Line, and North Shore has provided continuous service. Evidently, the parties executed a Sale Agreement for the Line, but a copy has not been located.

Unfortunately, PPLS was unaware that STB approval of the acquisition was required. PPLS, as a nuclear power plant with only infrequent rail service, no rail transportation contracts that have been located, and no personnel with experience in rail regulatory issues, did not realize the acquisition was subject to the Interstate Commerce Act. Outside counsel familiar with rail issues and ICC and STB issues arising at other PPL power plants were not known to or contacted by PPLS. We are confident that a timely notice of exemption would have been successful, and PPL's own interests would plainly have been better served by compliance in 2005.

The company was not indifferent to legal obligations of which it was aware. Since 2005, PPLS has continued to ship and receive rail freight via Norfolk Southern and North Shore. The only siding or delivery point on the line is at the PPLS nuclear power plant, so no other shipper has received service, but the possibility of service to or from other locations on the Line cannot be ruled out. PPLS has no objection to use of its Line by North Shore to serve other shippers, but PPLS has always paid all track maintenance and improvement costs. If North Shore serves others over the Line, it could turn out that North Shore handles more shipments for others than for PPLS. If so, the parties might need to arrange for some portion of North Shore revenues from such other traffic to be used to reduce PPLS's share of track costs.

PPLS has been responsive to its obligations to maintain and to upgrade the Line. Information about track needs has come from North Shore and SEDA-COG, a regional development authority that owns rail line over which North Shore operates up to its inter-

change point with the PPLS Line.² PPLS invested some \$500,000 in maintenance and improvements on the Line, and pays SEDA-COG for periodic inspections of the Line.³

PPLS regrets its failure to seek STB approval of its acquisition of the Line, and is prepared to take corrective action, either by seeking retroactive approval of its acquisition, or by seeking prospective approval. As in past years, all rail services over the Line would be performed by North Shore, since PPLS lacks the necessary equipment, personnel, experience and authority to operate locomotives or railcars or even to supervise rail operations over the Line.

North Shore's filings in this Docket indicate its willingness to operate over the Line, and provide common carrier service for PPLS if PPLS is the only shipper, and for others if there is interest in such service from any third party.

It appears that the missing piece of the puzzle is an application for STB approval of acquisition of the Line by PPLS, or an exemption. Unless otherwise instructed by the Board, PPLS will prepare an appropriate filing to remedy its oversight. PPLS would appreciate any guidance the Board can provide as to the availability of the exemption procedure.

In conclusion, PPLS recognizes that it should have sought Board approval in 2005 when the Line was acquired; it did not do so due to ignorance of STB regulatory requirements; and it is willing to acknowledge a common carrier obligation as to the Line, which it is working with North Shore to satisfy.

Respectfully submitted,



John M. Cutler, Jr.
Attorney for
PPL Susquehanna, LLC

cc: Brian O'Boyle, Esq.
Richard R. Wilson, Esq.

Attachment

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² There were, at one time, discussions concerning selling the Line to SEDA-COG, but those discussions have not led to an agreement.

³ When maintenance and track improvements have been called for, PPLS has not performed the work but has engaged North Shore, SEDA-COG or others to do the necessary work.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



FID No.	23-3022601
County	Luzerne
Federal Project No.	
USRA Line No.	1228
Claim No.	
Grantee	PPL Susquehanna, LLC and Allegheny Electric Cooperative, Inc.

QUIT CLAIM DEED

Made on July 12, 2005 between the Commonwealth of Pennsylvania, Department of Transportation (hereinafter called the GRANTOR), and PPL Susquehanna, LLC, with its principal office located at Two North Ninth Street, Allentown, Pennsylvania and Allegheny Electric Cooperative, Inc., with its principal office located at 212 Locust Street, Harrisburg, Pennsylvania as tenants in common with PPL Susquehanna, LLC having an undivided 90% interest in the property and Allegheny Electric Cooperative, Inc. having an undivided 10% interest in the property (hereinafter, whether singular or plural, called the GRANTEE),

WITNESSETH, That in consideration of One Hundred Twenty One Thousand dollars (\$121,000.00), in hand paid, the receipt whereof is hereby acknowledged, the said GRANTOR does hereby release and quitclaim to the said GRANTEE

- ☐ the premises described in "Exhibit A," made a part hereof,
- ☒ the premises designated by hatching on the map attached hereto and made a part hereof, determined by the GRANTOR, in accordance with Section 7(a)(3) of the Rail Freight Preservation and Improvement Act, to be appropriate for sale for continued rail use.

BEING the premises heretofore known as USRA Line Number 1228, the Bloomsburg Branch, located in Luzerne County, Pennsylvania, between milepost 170.0 at Salem Township, Luzerne County, Pennsylvania, and milepost 176.97 at Salem Township, Luzerne County, Pennsylvania ("Line"), condemned by the Commonwealth of Pennsylvania, Department of Transportation, by Declaration of Taking filed December 30, 1981, in the Court of Common Pleas of Luzerne County at No. 4829-C-1981, notice of which was filed in the Office for the Recording of Deeds, etc., of Luzerne County, Pennsylvania, in Book 32, Page 66, on December 30, 1981. The GRANTOR executed a Settlement Agreement (Post-Condemnation) with the Erie Lackawanna Railway Company on January 19, 1982.

RESERVING, however, to the GRANTOR a right of reversion by which, in the event that the GRANTEE does not provide continuous rail freight transportation service on the Line, as described in Section 5 of Commonwealth Agreement of Sale Agreement No. 820346, for a period of at least five (5) years after closing, title shall automatically revert to the GRANTOR.

REC Book 3005 Page 191470

CERTIFIED PROPERTY IDENTIFICATION NUMBER

MUNICIPALITY Salem Twp

PIN MAP P.3 BLOCK A LOT A1

TRANSFER 1 DIVISION

DATE 8-2-05 LP
Mapping Clerk

IN WITNESS WHEREOF said GRANTOR has hereunto set its hand and seal, the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY *Sharon A. Daboin*
Deputy Secretary of Transportation

(SEAL)

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF DAUPHIN :

On July 13, 2005, before me, the undersigned officer, personally appeared Sharon A. Daboin, who acknowledged herself to be Deputy Secretary of Transportation of the Commonwealth of Pennsylvania, and that she, as such Deputy Secretary of Transportation, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
PATRICIA POLLINO, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires April 1, 2008

Patricia Pollino
Notary Public
My Commission Expires:

(SEAL)

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF :

Recorded in the Office for Recording of
Deeds in and for aforesaid county in
Deed book Vol.
Page.

Witness my hand and seal of Office
on

I certify that, upon recording, the within instrument
should be mailed to GRANTEE at:

PPL Susquehanna, LLC
c/o Real Estate Services
2 North Ninth Street
Allentown, Pennsylvania 18101-1179

Recorder of Deeds
REC BOOK 3005 PAGE 191471

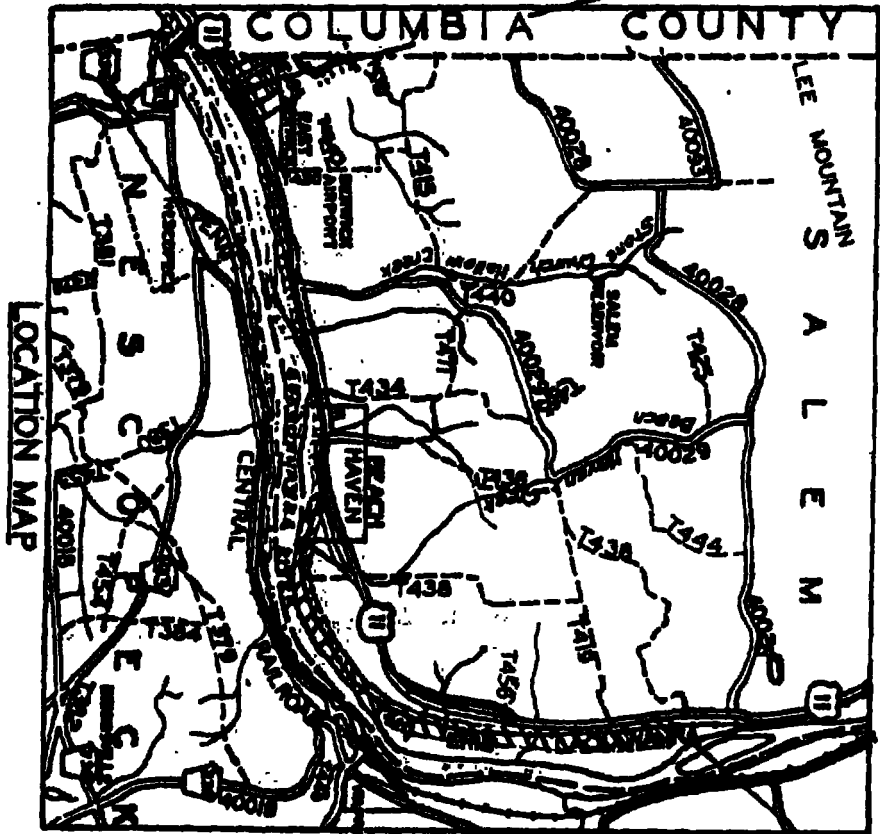
Sharon A. Daboin
GRANTEE

RECORDED OF DEEDS
LUZERNE COUNTY
PENNSYLVANIA
INSTRUMENT NUMBER
5649881
RECORDED ON
AUG 02, 2005
11:16:15 AM
BOOK: REC/3005
PAGE: 191470
Total Fees: 3

A WRIT TAX	\$0.50
A REALTY TAX	\$1,210.00
CS/ACCESS TO	\$10.00
USITICE	
LUZERNE COUNTY	\$13.00
RECORDING FEE	
LUZERNE COUNTY	\$2.00
RECORDING FEE	
LUZERNE RECORDER'S	\$3.00
RECORDING FEE	
LUZERNE COUNTY	\$13.00
JUSTING TRUST FUND	
EMILCK REALTY TAX	\$605.00
WELN TOWNSHIP TAX	\$605.00
TOTAL	\$2,444.50

05: 414404

MILE POST 176.97
SALEM TOWNSHIP
LUZERNE COUNTY



SCALE: 1" = 1 MILE

LOCATION MAP

REC Book 3005 Page 191472



I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office of Luzerne County, Pennsylvania.

Mary K. Opaleski
Recorder of Deeds
RECORDED 10/10/20



Recorder of Deeds
Luzerne County, Pennsylvania
Mary K. Opaleski
RECORDED 10/10/20

BEGIN ACQUISITION
MILE POST 170.00
SALEM TOWNSHIP
LUZERNE COUNTY